The opinion in support of the decision being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MICHAEL L. OBRADOVICH

Appeal No. 2004-1426
Application No. 10/038,346

HEARD: January 13, 2005

Before: HAIRSTON, LEVY, and NAPPI, **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 129 through 137, 139 through 146 and 148 through 154, which constitute all the claims in the application.

Invention

The invention relates to a system in a vehicle that identifies the location of the closest service station, when it is determined that the vehicle needs maintenance. See pages 27 and 28 of appellant's specification

Claim 129 is representative of the invention and reproduced below:

> 129. A method for assisting a user of a vehicle comprising:
> determining whether the vehicle needs a maintenance service;
> obtaining data concerning locations of at least first and second service providers for providing the maintenance service when it is determined that the vehicle needs the maintenance service;
> obtaining data concerning a current location of the vehicle;
> determining, of the at least first and second service providers, a closer service provider to the current location of the vehicle based on the data concerning the current location of the vehicle and the data concerning the locations of the at least first and second service providers; and
> selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle.

References

The references relied upon by the examiner are:

Blaker et al. (Blaker)	5,790,973	Aug. 04, 1998
Ross et al. (Ross)	5,859,628	Jan. 12, 1999
Suman et al. (Suman)	6,028,537	Feb. 22, 2000

Rejection at Issue

Claims 129 through 137, 139 through 146 and 148 through 154 stand rejected under 35 U.S.C. § 103 as being obvious over Ross in view of Suman. Claims 129 through 137, 139 through 146 and 148 through 154 stand rejected under 35 U.S.C. § 103 as being obvious over Blaker in view of Suman. Throughout the opinion we make reference to the brief[1] and the answer for the respective details thereof.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, and for the reasons stated *infra* we will not sustain the examiner's rejections of claims 129 through 137, 139 through 146 and 148 through 154 under 35 U.S.C. § 103.

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[1] Appellant filed an Appeal Brief on November 10, 2003 (certified as being mailed on November 7, 2003, in accordance with 37 C.F.R. § 1.8(a)).

Appellant argues on page 5 of the brief:

> nowhere does Suman or Blaker teach or suggest "selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle," as claim 129 recites. Similarly, nowhere does Suman or Blaker teach or suggest selecting the "closest" service provider "to the current location of the vehicle" to provide the maintenance service when the closest service provider is "within a predetermined distance from the current location of the vehicle," as claims 137 and 146 recite. For instance, when the claimed invention is applied to the above example the closer S_1 would be selected provided that $D <$ *a predetermined distance* (e.g. 5 miles), where D represents the distance of S_1 from the current location of the vehicle. By contrast, in Suman or Blaker the closer S_1 is selected provided that $X > DTE$, where X represents the distance of S_2 from the current location of the vehicle, and DTE varies from exit to exit on the highway when the subroutine 650 is applied, which cannot be predetermined.

Further, Appellant argues on page 5 of the brief:

> [t]he claimed invention, represented by claims 129, 137 and 146, requires that the selected service provider for providing the maintenance service satisfy two conditions, namely, (1) closest to the current location of the vehicle, and (2) within a predetermined distance from the current location of the vehicle. Thus, the nearest repair facility selected in Ross, at best satisfies condition (1) only, and as agreed by the examiner, Ross does not disclose that "the closer service provider is selected when the current vehicle position is within a predetermined distance".

In response, the examiner states, on pages 3 and 4 of the answer:

> Shuman teaches in columns 33-36, specifically column 34, lines 59-65, that the closer service provider (S_1) is selected when the closer service provider is within a predetermined distance (a distance less then the range of the vehicle) and the second service provider (S_2) is at a distance greater then the range of the vehicle (distance to empty). In the Suman

> invention, the predetermined distance is the range of the vehicle determined by the processor to be the distance to empty, the maximum distance the vehicle can continue without running out of fuel. As seen in figure 43 of Suman, this distance is calculated beforehand, i.e. predetermined, in step 658, before selection of the closest service provider in step 662. The distance to the closest service provider S_1 must be less then the predetermined distance, or else the vehicle would not be able to reach the selected service facility and the explicit purpose of Suman invention (see column 35, lines 47-51) would be rendered pointless.

While we agree with the examiner's characterization of the reference, we fail to find that Suman teaches the claimed "selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle. " We find that the relevant teaching of Suman is the "Last Exit Warning System" shown in figures 41 and 43 and described in columns 32 through 34, further we find that Blaker contains a nearly identical teaching of a Last Exit Warning System" shown in figures 1(a), 1(b) and 4 and described in column 4. While we agree with the examiner that the distance to the closest service provider S_1 must be within the predetermined distance (distance to empty) when selected, we do not find that the selection of S_1 is based upon the service provider S_1 being within the predetermined distance. Rather, we find that both Suman and Blaker each teach that the service provider S_1 is selected when the distance to the second service provider, S_2, is greater then the distance to empty. If the distance, X, to the second service provider is less than the distance to empty no selection is

made (see flow line 664 in figure 43 of Suman, line 64 in figure 4 of Blaker) i.e. regardless of whether the distance to first service provider S_1 is greater or less than the distance to empty, it will not be selected if the distance to the second service provider is within the range of the vehicle.

On page 2 of the office action dated June 16, 2003, the examiner asserts that Ross teaches a system that determines if a vehicle needs maintenance and identifies the closest maintenance provider. The examiner does not assert, nor do we find that Ross teaches or suggests "selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle." Accordingly, we will not sustain the examiner's rejection of claims 129 through 137, 139 through 146 and 148 through 154 under 35 U.S.C. § 103 as being obvious over Ross in view of Suman.

As stated *supra* we find that the disclosure of Suman's "Last Exit Warning System" is nearly identical to the teaching of the "Last Exit Warning System" of Blaker. We do not find that Blaker teaches or suggests "selecting the closer service provider to provide the maintenance service when the closer service provider is within a predetermined distance from the current location of the vehicle." Accordingly, we will not sustain the examiner's rejection of claims 129 through 137, 139 through 146 and 148 through 154 under 35 U.S.C. § 103 as being obvious over Blaker in view of Suman.

In summary we will not sustain either of the examiner's rejections under 35 U.S.C. § 103. Accordingly, we reverse the examiner's rejection of claims 129 through 137, 139 through 146 and 148 through 154.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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STUART S. LEVY) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
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ROBERT E. NAPPI)
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